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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,889	04/22/2002	Alexander Sher	113308-005	6145
7590 01/23/2004				
Robert M. Barrett Bell, Boyd & Lloyd P.O. Box 1135 Chicago, IL 60690-1135				
EXAMINER PRATT, HELEN F				
ART UNIT		PAPER NUMBER		
1761				

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)
09/914,880	SHER ET AL.
Examiner	Art Unit
Helen F. Pratt	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by absolute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2002 and 09 July 2002.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19, 21, 22 and 25 is/are rejected.
- 7) ☒ Claim(s) 20, 23 and 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet, 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet, 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19, 21, 22, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barani et al. (WO 93/08830) or Kaishi (XP-000914255) or Medical research (673,063).

Barani et al. disclose a composition contains an iron-protein hydrolysate complex made from ferrous ions and hydrolyzed egg white protein (abstract and page 3, lines 5-13, lines 25-30, and page 4, lines 25-32 and page 5, lines 4-8). Kashi (XP-000914255) discloses that it is known to make an iron and egg-white albumin hydrolyzate (abstract, last 5 lines). Medical research discloses that it is known to make an iron-protein hydrolysate out of egg albumin (egg white) (page 2, lines 85-95). Claims 1 and 2 differ from the reference in the particular molecular weight (mw). However, nothing is seen that molecular weights within the claimed range are not used in the composition of the reference. Therefore, it would have been obvious to make an iron-protein hydrolysate complex with various molecular weights.

Claim 3 requires that the egg protein is hydrolyzed with a microbial protease. Kaishi discloses that the hydrolysis was done using *Bacillus subtilis*, which is a microbial protease, which would produce a microbial protease

hydrolysate (abstract). Therefore, it would have been obvious to make a microbial hydrolysate as claimed.

Claims 4-5 require particular proteases. However, as one protease has been disclosed which makes a hydrolyzate, it would have been within the skill of the ordinary worker to use other protease, absent anything new or unobvious being produced. Therefore, it would have been obvious to use other proteases to make the claimed composition.

Claim 6 requires that the complex contain particular amounts of ferrous ions and claim 7 that it is stable at a neutral pH, but disassociates at a pH below 4. It is seen at this time that the above composition from the various references do contain the claimed amount of ferrous ions. Barani et al. disclose that the iron content is 11%, which is a little more than the claimed amount (page 6, lines 24-25). No patentable distinction is seen in the use of 10% and 11 % at this time. Therefore, it would have been obvious to use particular amounts of iron in the composition as shown by Barani et al. Medical research discloses a pH of amount 3-6 (page 2, lines 25-30). It is not known whether the composition disassociates at a pH of below 3. Since the claimed composition has been shown at the right pH, it is seen that it would have disassociated at below a pH of 3. Therefore, it would have been obvious to make a product as claimed as shown by the above references.

The limitations of claims 8-18 have been disclosed above and are obvious for those reasons.

Claim 19 further requires that the iron protein hydrolysate complex is a sterilized liquid. Nothing new is seen in sterilizing liquids, which is within the skill of the ordinary worker. Therefore, it would have been obvious to sterilize the claimed composition.

Claim 23 is to a beverage powder containing lipids. However, fortified beverage powders are well known as is fat in food composition. The reference to Barani discloses that it is known to use iron in foods (page 2, 17-21). Powders are disclosed in page 5, lines 25-29). Therefore, it would have been obvious to use the claimed composition in a powder.

The limitations as to the process have been disclosed by Medical Research who uses an enzymatic agent to digest proteins which can be egg white (albumin (page 2, lines 25-56, page 1, lines 80-85, page 2, lines 25-30, lines 50-55). Therefore, it would have been obvious to make a composition as claimed.

Allowable Subject Matter

Claims 20, 23, 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-0404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0987.

Hp 1-16-04


HELEN PRATT
PRIMARY EXAMINER